

ORIGINAL

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FILED IN THE  
UNITED STATES DISTRICT COURT  
DISTRICT OF HAWAII

MAY 16 2019

at 3 o'clock and 05 min. PM  
SUE BEITIA, CLERK

LS

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF HAWAII

YA-WEN HSIAO,

Plaintiff,

vs.

ALEXANDER ACOSTA, in his  
capacity as the United States Secretary  
of Labor,

Defendant.

CIVIL NO. 18-CV-00502-JAO-KJM

**PLAINTIFF'S OPPOSITION TO  
DEFENDANT'S MOTION TO  
DISMISS AND  
REQUEST FOR CENSURE AND  
ORDER TO SHOW CAUSE;**

**MEMORANDUM IN SUPPORT;**

**CERTIFICATE OF SERVICE**

Hearing Date: June 7, 2019

Hearing Time: 11:00 AM

Place: Aha Kanawai

Before: Honorable Judge Jill A. Otake

**PLAINTIFF'S OPPOSITION ON DEFENDANTS MOTION TO DISMISS**

On March 4, 2019, Defendants filed a Motion to Dismiss pursuant to Rule 12(b)(1) of the Federal Rules of Civil Procedure. The Plaintiff hereby presents her objections to the motion and further moves the court to censure and order the defendants to show cause for several issues that are presented in the memorandum of support. This is a re-submitted opposition but the Exhibit's that were submitted at ECF 14 are still relevant, the Plaintiff will refer to those exhibits in the memorandum of support that follows rather than re-file them again.

The Plaintiff finds the Defendant's contentions as odd because they actually made the argument for the Plaintiff's constitutional and prudential standing. The Defendant's description has satisfied the three elements of constitutional standing the Plaintiff needs to satisfy. The Defendant has been deprived of the ability to work past her current work permit and denied the opportunity to take the following regulatory steps towards permanent residence, these injuries stem directly from, among other things, the denial of the Labor Certification by the Defendant. These injuries may be redressed by this Court by ordering the Labor Certification be issued and grant other relief prayed for in the complaint.

Plaintiff agrees with the Defendant that she is the beneficiary of the Labor Certification application. The Defendant used the words "beneficiary" and "on behalf" not less than ten times in their Motion to Dismiss attacking the Plaintiff's standing. This statement by the defendant, clearly is contradictory to their contention that the Plaintiff does not "benefit" from this application by the Employer.

The Defendant applies the concept of prudential/statutory standing erroneously as this action, by the Defendant's own admission, was brought under the APA. Even if the Plaintiff were to apply Defendant's analysis, the Plaintiff would have standing as she is regulated by the INA. Further, her interests are protected by the INA as she is part of the US Workforce.

The Defendant cites multiple cases explaining standing in *dictum*, but none in relation to the Plaintiff's standing in court with regards to the Program Electronic Review Management (PERM) regulations. In addition, cases cited are taken out of context and almost exclusively out of this Court's circuit.

The Plaintiff can accept that the Defendant, may misconstrue the requirements of Constitutional Standing and Prudential/Statutory Standing. What the plaintiff cannot accept is a frivolous claim when the Defendant has already accepted that the Plaintiff has independent standing to seek review in Federal District court.

As such, the Plaintiff also moves the court to order the Defendant to show cause why the Defendant would waive the “standing” argument, yet, bring it to this current litigation.

Finally, the Plaintiff also contends that the FOIA violations are not moot. The Defendant’s allegation that the FOIA request was completed is not accurate. Again, the Plaintiff asks the Court to order the Defendant to explain these untruths in their statements.

For these reasons, based on the pleadings, the record to date, the memorandum in support and exhibits presented, the Plaintiff moves the court to Deny the Motion to dismiss, censure the Defendant and to order them to show cause in the issues presented.

Dated: May 16, 2019

Respectfully Submitted



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**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that on the date stated below, a true and correct copy of the foregoing document was duly served upon the following by USPS Priority Mail.

**Harry Yee**

PJKK Federal Building  
300 Ala Moana Blvd. Room 6-100  
Honolulu HI 96850

**Samuel P Go**

USDOJ/CIVIL/OIL/DCS  
P.O. Box 868  
Ben Franklin Station  
Washington, D.C. 20044



Ya-Wen Hsiao

Dated: May 16, 2019 at Honolulu, HI